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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**

8 DOUGLAS F. EIGEMAN,)
9 Plaintiff,)
10 v.) 3:11-CV-219-RCJ-VPC
11 PEPPERMILL CASINOS, INC.,) **ORDER**
12 Defendant.)
13 _____)

14 Currently before the Court are Defendant's Motion for Summary Judgment (#31);
15 Plaintiff's Motion for a Conference with the Judge Prior to Granting Summary Judgment to
16 Either Party (#36); Plaintiff's Motion for Summary Judgment (#37); and Motion to Sanction the
17 Defendant (#41). The Court heard oral argument on May 29, 2012.
18

19 **BACKGROUND**

20 **I. Complaint**

21 In March 2011, *pro se* Plaintiff Douglas F. Eigeman filed a civil rights complaint
22 pursuant to 42 U.S.C. § 1983 in this Court. (Compl. (#4) at 1). He alleged one cause of action
23 that Defendant Peppermill Casinos, Inc. ("Defendant" or "Peppermill") violated Title VII and the
24 Age Discrimination Employment Act ("ADEA"). (*Id.* at 4). Plaintiff alleged the following. He
25 was 68 years old and the Peppermill had discriminated against him based on age by denying
26 him the equal terms and conditions of his employment and by discharging him. (*Id.* at 13).
27 He had worked as an internal auditor at the Peppermill from June 11, 2007, through August
28 18, 2009. (*Id.*). Plaintiff had three supervisors, Barbara Santavasci, Erik Fields, and David
Mueller. (*Id.*). Fields had given Plaintiff an outstanding review on June 11, 2009. (*Id.*).

1 However, Mueller had not given Plaintiff a very good review. (*Id.*). After Plaintiff tried to
 2 explain to Mueller that the items Mueller was criticizing Plaintiff on were immaterial, Mueller
 3 began to retaliate. (*Id.*). On August 17, 2009, Mueller refused to talk with Plaintiff. (*Id.*). That
 4 same day, Mueller called casino security and told them that Plaintiff was threatening him. (*Id.*).
 5 Mueller and the human resources representative, Michelle Manning, had fired Plaintiff based
 6 on a lie that Plaintiff had threatened Mueller. (*Id.*). Plaintiff thought Defendant had fired him
 7 because his health insurance was too expensive due to his age. (*Id.*). Previously, Mueller had
 8 told Plaintiff that he and Manning were trying to get Santavasci fired. (*Id.*). The Peppermill
 9 dismissed Santavasci the month she turned sixty-six. (*Id.*). None of Plaintiff's three
 10 supervisors—Fields, Mueller, or Santavasci—had ever disciplined him. (*Id.*). Plaintiff sought
 11 relief in the amount of \$170,832.81, his salary computed at what he was earning at the time
 12 Defendant dismissed him. (*Id.* at 9).

13 In September 2011, this Court dismissed Plaintiff's Title VII claim without leave to
 14 amend, but found that Plaintiff had stated a claim for age discrimination under the ADEA, 29
 15 U.S.C. § 623(a). (Order (#17) at 4).

16 **II. Summary Judgment Facts**

17 Plaintiff testified to the following at his deposition. (Eigeman Depo. (#31-2) at 3). He
 18 was born on January 26, 1941. (*Id.*). He had interviewed with Barbara Santavasci for the job
 19 at the Peppermill and was hired as an internal auditor on June 11, 2007. (*Id.* at 3-5).
 20 However, internal auditors did not do internal auditing, but instead did gaming law compliance.
 21 (*Id.* at 4). As an internal auditor, Plaintiff went to various departments to determine whether
 22 the departments were complying with gaming regulations. (*Id.*). When he started at the
 23 Peppermill, his supervisor was Erik Fields. (*Id.*). When Plaintiff started at the Peppermill,
 24 Fields was a senior accountant and then became the director when Santavasci left in January
 25 2009. (*Id.*). Santavasci would make a list for Plaintiff of the things he had done wrong, or
 26 audit points, and Plaintiff would go back and correct them. (*Id.*).

27 Plaintiff testified to the following. In August 2009, Fields and David Mueller presented
 28 Plaintiff with a performance review. (*Id.* at 6). During the deposition, Plaintiff claimed that the

1 review was a forged copy. (*Id.* at 7). Plaintiff admitted that the review contained both his and
2 Field's handwriting and also contained his signature. (*Id.*). Plaintiff believed the review was
3 doctored because when he had left the evaluation that day, he "felt in high esteem." (*Id.*). He
4 thought that this review had been doctored by Mueller and Michelle Manning to make him look
5 bad. (*Id.*). The ratings contained two of the lowest ratings and two of the highest ratings and
6 Plaintiff stated, "[t]here was no possible way that my ratings were this." (*Id.*).

7 Plaintiff testified to the following. After Santavasci left, Fields reviewed Plaintiff's work
8 and had made "more audit points than [Plaintiff] could count." (*Id.* at 8). When Fields was the
9 director, Fields had stated that Plaintiff had made errors in his audits and wrote them up in a
10 report. (*Id.*). During the Friday, August 14, 2009 evaluation, Mueller had been "very, very,
11 very petty." (*Id.* at 8, 10). Mueller told Plaintiff that Plaintiff had not properly done an \$8,000
12 value on a promotion and that Plaintiff had spoken to the boss of the poker room instead of
13 talking to the accounting person. (*Id.* at 9). During the evaluation, Plaintiff asked Mueller if
14 Mueller would consider traveling and expressed his opinion that Mueller should travel. (*Id.*).
15 Mueller stated that his daughter required him to be in town all the time. (*Id.*). Plaintiff stated
16 that "his daughter [was] an adult" and that she had "a mother." (*Id.*).

17 Plaintiff testified to the following. On Monday, August 17, 2009, he had come to work
18 and then went to Mueller's office to ask Mueller for a copy of a newspaper article about a fine
19 on Mueller's wall. (*Id.* at 10). Plaintiff had carried papers about his family into Mueller's office
20 because during the August 14th evaluation Mueller commented that calling Slavek, another
21 employee, a "Polish prince" was a racial slur. (*Id.* at 10-11). Plaintiff stated that Slavek had
22 said that Plaintiff was Jewish. (*Id.* at 11). Plaintiff said he could prove he was not Jewish and
23 had a cousin in 1400s Switzerland and that they were all Catholics. (*Id.*). On August 17th,
24 Plaintiff went to Mueller's office carrying papers about his family and asked for the newspaper
25 article. (*Id.* at 10, 12). Mueller responded that he did not want to have anything to do with
26 Plaintiff and shoved the documents off of his desk. (*Id.* at 12). After Mueller pushed the
27 papers off the desk, Plaintiff called Mueller a "phony" and said "why don't you hit me, I'm 69
28 years old." (*Id.* at 13). Plaintiff said that to Mueller because Mueller had come around from

1 his desk and Plaintiff thought that Mueller was going to hit him. (*Id.*). Plaintiff also said, "go
 2 ahead and hit me" and "I don't normally pick fights with people younger than me, and I haven't
 3 picked a fight in a long time." (*Id.*). Plaintiff also said, "you're a big shot, fire me." (*Id.*).
 4 Plaintiff told Mueller to fire him because "that's what [Mueller] wanted to do." (*Id.*). Plaintiff
 5 stated that he had provoked Mueller during that meeting because Mueller was mad. (*Id.* at
 6 14).

7 Plaintiff testified to the following. (*Id.*). Mueller had called security. (*Id.*). During the
 8 meeting with security, Plaintiff told them that Mueller did not travel anywhere, smoked a couple
 9 hours a day, and had no respect for anybody but himself. (*Id.*). Plaintiff disrespected Mueller
 10 because Mueller would not travel. (*Id.*). After Plaintiff had met with security on August 17th,
 11 he met with Fields and Manning. (*Id.* at 14-15). Plaintiff told them that Mueller did not travel
 12 and Manning responded that Mueller's personal matters were not any of his concern. (*Id.*).
 13 Plaintiff told Manning that he had gone to Mueller's office to give Mueller proof that he was not
 14 a Jew. (*Id.* at 15). Manning suspended Plaintiff. (*Id.*).

15 Plaintiff testified to the following. (*Id.*). During the afternoon of August 17th, Plaintiff
 16 called Fields and said "I guess this means I'm done." (*Id.* at 16). Fields said "yeah, come in
 17 and get your things." (*Id.* at 17). Plaintiff picked up his belongings on August 18th and signed
 18 his termination form. (*Id.*). Plaintiff felt that Mueller had wanted him fired because Plaintiff
 19 "knew how little work he did" and "knew his daughter was an adult." (*Id.* at 18). Plaintiff
 20 admitted that he did not know what Mueller's August 14th evaluation said because Plaintiff
 21 "didn't really read [Mueller's]" because he "considered it immaterial in the scope of a year's
 22 work." (*Id.*). Plaintiff felt that Mueller wanted Plaintiff out of there because Plaintiff "knew
 23 [Mueller] was a phony" and knew that he did not work. (*Id.*).

24 Plaintiff testified to the following. He had never complained of age discrimination during
 25 his employment. (*Id.* at 22). He claimed that he had been discriminated based on his age
 26 because he "did more work than the people that were . . . older. And . . . [he] spent a lot of
 27 time with these age discrimination people, and they're the ones that encouraged [him] to, to
 28 file all this stuff." (*Id.*). Plaintiff stated that the Equal Employment Opportunity Commission

1 had encouraged him to file an age discrimination charge by giving him all of the forms. (*Id.*
2 at 22-23). Plaintiff was 66 years old when the Peppermill hired him. (*Id.* at 23). Plaintiff felt
3 that his age discrimination claim was supported by the fact that he was willing to travel when
4 a person far below his age would not travel and because he worked harder than the kids that
5 he worked with other than Fields. (*Id.*).

6 The Peppermill Employee Handbook stated that the Peppermill was committed to non-
7 discrimination and directed employees to report any retaliation to his or her supervisor or any
8 other company supervisor, manager, division director, employee relations manager, or director
9 of human resources. (Employee Handbook (#31-2) at 27). The Employee Handbook also
10 prohibited conduct such as “[b]eing rude, discourteous or offensive to guests, supervisors, or
11 fellow Employees.” (*Id.* at 30). Such conduct could lead to “corrective disciplinary action up
12 to and including termination, as management deem[ed] appropriate.” (*Id.* at 31). Plaintiff
13 signed an acknowledgment that he had received this handbook on June 6, 2007. (*Id.* at 32).

14 The August 14, 2009 performance evaluation signed by Plaintiff, Fields, and Mueller
15 stated the following. (August 2009 Performance Evaluation (#31-2) at 36-37). Plaintiff
16 received a below expectation mark for interpersonal skills/attitude. (*Id.* at 36). The review
17 stated that Plaintiff needed “to take the initiative in finding work, help with others work. When
18 expressing opinions, sometimes comes across in a threatening manner as opposed to calm,
19 constructive voice.” (*Id.*). Plaintiff received a below expectation mark for technical skills. (*Id.*).
20 The review stated that Plaintiff was “not properly preparing to perform the audit . . . need[ed]
21 to work at gaining additional knowledge of IT systems.” (*Id.*). Plaintiff received two “met
22 expectations” marks for attendance/punctuality and appearance. (*Id.*). The supervisor’s
23 comments box stated, “I have noticed more commitment from [Plaintiff] the past couple of
24 weeks—more positive. I would like to see [Plaintiff] ask more questions when he is not sure
25 about [something] while performing audits. I believe this would help eliminate audit points.”
26 (*Id.* at 37). In the employee comments, Plaintiff wrote “[t]his entire operation was a brand new
27 concept to me. I know accounting, this is compliance, which is not only not understood but
28 under [Stansavasci] I was told we don’t ‘spoon feed our employees.’ This is a better place

1 today and I appreciate the effects of [Fields] and [Mueller].” (*Id.*).

2 In the first statement that Plaintiff wrote for security on August 17, 2009, Plaintiff stated
 3 the following. (First Security Statement (#31-2) at 41; Eigeman Depo. (#31-2) at 15). Plaintiff
 4 went to Mueller’s office at 7:00 a.m. and asked if he could get the newspaper article about the
 5 Peppermill being fined. (First Security Statement (#31-2) at 41). Mueller responded, “I have
 6 nothing for you.” (*Id.*). Plaintiff then laid documents on Mueller’s desk and Mueller shoved
 7 those to the floor. (*Id.*). Plaintiff told Mueller, “you’re a phony” and Mueller said something to
 8 the effect that Plaintiff was “crazy.” (*Id.*). Plaintiff replied, “You’re a big shot, fire me.” (*Id.*).

9 In the second statement that Plaintiff wrote for security on August 17, 2009, which he
 10 wrote fifteen minutes later, Plaintiff stated the following. (Second Security Statement (#31-2)
 11 at 42; Eigeman Depo. (#31-2) at 16). After Mueller shoved the papers to the floor, Plaintiff
 12 went to pick up the papers and Mueller “began coming around his desk.” (Second Security
 13 Statement (#31-2) at 42). Plaintiff told Mueller “hit me I’m 68 years old, you’re a phony.” (*Id.*).
 14 Then Mueller said something to the effect that Plaintiff was crazy and Plaintiff replied, “You’re
 15 a big shot, fire me.” (*Id.*).

16 On August 17, 2009, Plaintiff signed a form stating that he was “being suspended
 17 pending investigation due to an incident and a following discussion with management.”
 18 (Suspension Form (#31-3) at 2). On August 18, 2009, Plaintiff signed his termination form
 19 stating that he was being terminated for “poor performance and inappropriate behavior.”
 20 (Termination Form (#31-3) at 4).

21 In her declaration, Michelle Manning stated the following. (Manning Decl. (#31-4) at 1).
 22 She had been the Director of Human Resources for the Peppermill since April 2008. (*Id.*). On
 23 August 17, 2009, Senior Auditor David Mueller called her regarding an incident with Plaintiff.
 24 (*Id.*). Mueller stated that Plaintiff had come into his office that morning and had acted in a
 25 threatening manner and that he had called security. (*Id.*). Manning had met with security who
 26 indicated that Plaintiff had been “uncooperative and excitable during his meeting with them,
 27 but [had] denied any confrontational or threatening behavior toward Mueller.” (*Id.* at 1-2).
 28 Plaintiff had told security that he was upset with Mueller for not traveling to Wendover and for

1 smoking ten to twelve hours a day. (*Id.* at 2). Fields had told Manning that Plaintiff was having
2 performance problems and that Plaintiff had received a poor performance from he and Mueller
3 the Friday before. (*Id.*). She and Fields had met with Mueller to further investigate the
4 situation and they had “difficulty talking to [Plaintiff] because he would not listen, continually
5 interrupted, and redirected the conversation to irrelevant topics.” (*Id.*). Plaintiff had told them
6 that he was frustrated with Mueller because he did not travel and had started talking about
7 Mueller’s daughter and her medical condition. (*Id.*). Manning told Plaintiff that Mueller’s
8 personal matters were irrelevant and that Fields, as the department leader, made the ultimate
9 decision about who traveled. (*Id.*). After acquiring Mueller’s version of the facts, Manning met
10 with Vice President of Administration Denise Vessie and they made the ultimate decision to
11 terminate Plaintiff based on the fact that he was “a poor performer, who had behaved
12 inappropriately and insubordinately, and who showed an inability to acknowledge or
13 understand his problems.” (*Id.* at 4).

14 In his declaration, Erik Fields, Director of Internal Audit, stated the following. (Fields
15 Decl. (#31-5) at 1). Fields was Plaintiff's direct supervisor during employment. (*Id.*). Although
16 Fields personally liked Plaintiff, “[Plaintiff] often expressed his opinions in a confrontational and
17 unprofessional manner, and he had performance problems.” (*Id.*). When Fields had been
18 promoted to Director of Internal Audit in February 2009, Mueller became the Senior Auditor
19 and also supervised Plaintiff. (*Id.* at 2). Mueller and Fields had jointly prepared, completed,
20 and approved Plaintiff's August 2009 review. (*Id.*). They wanted to convey to Plaintiff that he
21 “had serious performance problems, and needed to vastly improve, as prior efforts to
22 informally convey this to [Plaintiff] had not been successful.” (*Id.*). Fields stated that the
23 review was not doctored and that the review was the same one that Plaintiff had been
24 presented with on August 14, 2009. (*Id.* at 2-3).

LEGAL STANDARD

26 In reviewing a motion for summary judgment, the court construes the evidence in the
27 light most favorable to the nonmoving party. *Bagdadi v. Nazar*, 84 F.3d 1194, 1197 (9th Cir.
28 1996). Pursuant to Fed.R.Civ.P. 56, a court will grant summary judgment “if the movant shows

1 that there is no genuine dispute as to any material fact and the movant is entitled to judgment
 2 as a matter of law." Fed.R.Civ.P. 56(a). Material facts are "facts that might affect the outcome
 3 of the suit under the governing law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106
 4 S.Ct. 2505, 2510, 91 L.Ed.2d 202 (1986). A material fact is "genuine" if the evidence is such
 5 that a reasonable jury could return a verdict for the nonmoving party. *Id.*

6 The moving party bears the initial burden of identifying the portions of the pleadings and
 7 evidence that the party believes to demonstrate the absence of any genuine issue of material
 8 fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 2553, 91 L.Ed.2d 265
 9 (1986). A party asserting that a fact cannot be or is genuinely disputed must support the
 10 assertion by "citing to particular parts of materials in the record, including depositions,
 11 documents, electronically stored information, affidavits or declarations, stipulations (including
 12 those made for purposes of the motion only), admissions, interrogatory answers, or other
 13 materials" or "showing that the materials cited do not establish the absence or presence of a
 14 genuine dispute, or that an adverse party cannot produce admissible evidence to support the
 15 fact." Fed. R. Civ. P. 56(c)(1)(A)-(B). Once the moving party has properly supported the
 16 motion, the burden shifts to the nonmoving party to come forward with specific facts showing
 17 that a genuine issue for trial exists. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475
 18 U.S. 574, 587, 106 S.Ct. 1348, 1356, 89 L.Ed.2d 538 (1986). "The mere existence of a
 19 scintilla of evidence in support of the plaintiff's position will be insufficient; there must be
 20 evidence on which the jury could reasonably find for the plaintiff." *Anderson*, 477 U.S. at 252,
 21 106 S.Ct. at 2512. The nonmoving party cannot defeat a motion for summary judgment "by
 22 relying solely on conclusory allegations unsupported by factual data." *Taylor v. List*, 880 F.2d
 23 1040, 1045 (9th Cir. 1989). "Where the record taken as a whole could not lead a rational trier
 24 of fact to find for the nonmoving party, there is no genuine issue for trial." *Matsushita*, 475
 25 U.S. at 587, 106 S.Ct. at 1356.

26 DISCUSSION

27 I. Defendant's Motion for Summary Judgment (#31)

28 Defendant asserts that Plaintiff's claim of age discrimination fails as a matter of law

1 because he cannot establish a prima facie case for age discrimination. (Mot. for Summ. J.
2 (#31) at 13). Defendant asserts that Plaintiff cannot establish that he was performing his job
3 in a satisfactory manner and cannot establish that he was replaced by a substantially younger
4 employee or that any younger employee with similar performance issues was treated more
5 favorably. (*Id.*).

6 In response, Plaintiff objects to the motion for summary judgment. (Obj. to Mot. for
7 Summ. J. (#33) at 1). Plaintiff states that his annual evaluation was a fabricated document
8 and that Defendant will never be able to produce an original document to support that
9 evaluation. (*Id.*). Plaintiff also objects to Defendant providing excerpts of his deposition rather
10 than providing the whole document. (*Id.* at 2). Plaintiff thinks that Defendant's attorney should
11 be sanctioned for providing excerpts of the deposition. (*Id.*).

12 In reply, Defendant argues that Plaintiff's objections are without merit because Plaintiff's
13 own testimony established that he had performance problems. (Resp. to Obj. to Mot. for
14 Summ. J. (#34) at 1). Defendant asserts that Plaintiff was terminated based on the
15 performance review but also on the totality of the facts after the incident with Mueller and HR's
16 investigation into the incident. (*Id.* at 2).

17 The Age Discrimination in Employment Act ("ADEA") makes it unlawful "to discharge
18 any individual . . . because of such individual's age." 29 U.S.C. § 623(a)(1). The Court
19 evaluates ADEA claims that are based on circumstantial evidence of discrimination using the
20 three-stage burden-shifting framework laid out in *McDonnell Douglas Corp. v. Green*, 411 U.S.
21 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973). *Diaz v. Eagle Produce Ltd. Partnership*, 521 F.3d
22 1201, 1207 (9th Cir. 2008). Under this framework, the employee must first establish a prima
23 facie case of age discrimination. *Id.* A plaintiff can establish a prima facie case of disparate
24 treatment by demonstrating that he was "(1) at least forty years old, (2) performing his job
25 satisfactorily, (3) discharged, and (4) either replaced by substantially younger employees with
26 equal or inferior qualifications or discharged under circumstances otherwise 'giving rise to an
27 inference of age discrimination.'" *Id.* "An inference of discrimination can be established by
28 showing the employer had a continuing need for the employees' skills and services in that their

1 various duties were still being performed . . . or by showing that others not in their protected
2 class were treated more favorably." *Id.* at 1207-08 (internal quotations and alterations
3 omitted).

4 In this case, Plaintiff fails to establish a prima facie case for age discrimination because
5 he fails to demonstrate that he was performing his job satisfactorily and that he was replaced
6 by substantially younger employees with inferior qualifications or discharged under
7 circumstances giving rise to an inference of age discrimination. As Plaintiff's deposition
8 shows, even if he disagrees with the authenticity of the performance evaluation, he testified
9 that Fields had made "more audit points than [Plaintiff] could count." (See Eigeman Depo.
10 (#31-2) at 8). Thus, Plaintiff acknowledged his performance problems. Additionally, Fields's
11 declaration confirms Plaintiff's performance problems. Moreover, Plaintiff's own deposition
12 demonstrates that he was not performing his job satisfactorily on August 17, 2009, because
13 he was rude, discourteous, and offensive to Mueller when he called Mueller a "phony," "you're
14 a big shot, fire me," and "go ahead and hit me." This behavior was in contravention to the
15 Employee Handbook. As such, Plaintiff was not performing his job satisfactorily at the time
16 of his termination.

17 Moreover, there is no evidence in the record that Plaintiff had been replaced by a
18 substantially younger employee with inferior qualifications. Additionally, there is no evidence
19 in the record that Plaintiff had been discharged under circumstances giving rise to an inference
20 of age discrimination. In fact, Plaintiff believes that he was terminated, not based on his age,
21 but because he knew how little Mueller worked and that Mueller's daughter was an adult. (See
22 Eigeman Depo. (#31-2) at 18). Therefore, Plaintiff fails to establish a prima facie case for age
23 discrimination and the Court GRANTS Defendant's motion for summary judgment (#31) in its
24 entirety with prejudice.

25 **II. Plaintiff's Motion for a Conference with the Judge (#36)**

26 Plaintiff asserts that his performance evaluation is not a true document or an original
27 document. (Mot. for Conference (#36) at 1). Plaintiff asserts that Defendant's attorney should
28 be sanctioned for carrying on the case without any solid evidence. (*Id.*). Plaintiff also asserts

1 that Defendant's motion for summary judgment exhibits are immaterial or without merit. (*Id.*
 2 at 2).

3 Defendant responds that Plaintiff's motion raises a number of irrelevant and misguided
 4 arguments. (Resp. to Mot. for Conference (#39) at 1).

5 The Court finds that Plaintiff's motion is without merit because the exhibits comply with
 6 Fed. R. Civ. P. 56(c). The Court denies the Motion for a Conference with Judge (#36).

7 **III. Plaintiff's Motion for Summary Judgment (#37)**

8 Plaintiff's motion for summary judgment is incoherent and argues that the Seeno
 9 Family, who owes the Peppermill, has a history of racketeering. (Mot. for Summ. J. (#37) at
 10 1-2). Plaintiff also makes allegations that he never had any problems with Mueller until August
 11 17, 2009, that Fields is a sick man because he is willing to commit perjury to help his job
 12 security, and that Manning had "no business butting into Internal Audit business." (*Id.* at 2).
 13 Plaintiff also asserts that Defendant's attorney needs to be sanctioned because her
 14 interrogatories were harassing, she edited the deposition, and she did not take the time to tie
 15 the exhibits to the deposition. (*Id.* at 3). Plaintiff then attaches documents pertaining to the
 16 ownership of the Peppermill and articles about the Seeno Family. (*Id.* at 5-21).

17 In response, Defendant asserts that Plaintiff's motion, filed February 9, 2012, is
 18 untimely because all dispositive motions were due by January 23, 2012. (Opp'n to Mot. for
 19 Summ. J. (#1-2). Defendant argues that Plaintiff has failed to produce any evidence of age
 20 discrimination. (*Id.* at 2).

21 The Court denies Plaintiff's motion for summary judgement (#37) because he provides
 22 no evidence that Defendant terminated him based on age discrimination.

23 **IV. Motion to Sanction the Defendant (#41)**

24 Plaintiff seeks sanctions against Defendant's attorney because she used "dirty tricks"
 25 in mailing documents to Plaintiff because the envelope was crumpled. (Mot. to Sanction (#41)
 26 at 1). Plaintiff attaches a copy of an envelope and a letter from Bonanza Reporting-Reno, LLC
 27 informing Plaintiff that his deposition was ready for reading and signing. (*Id.* at 2-3).

28 In response, Defendant asserts that Plaintiff's motion fails to comply with Fed. R. Civ.

1 P. 11(c)(2) because Defendant did not serve the motion to Defendant prior to filing it with the
2 Court. (Opp'n to Mot. for Sanctions (#43) at 1). Defendant also states that the letter was from
3 Bonanza Reporting and, thus, is not a letter from Defendant. (*Id.* at 2).

4 Plaintiff filed an incoherent reply. (Comments to Opp'n to Mot. for Sanctions (#44) at
5 1).

6 The Court finds that the motion is without merit and denies the Motion for Sanctions
7 (#44).

8 **CONCLUSION**

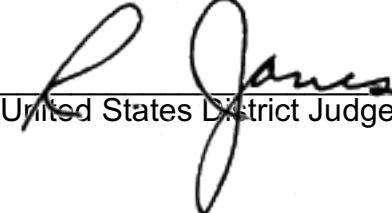
9 For the foregoing reasons, IT IS ORDERED that Defendant's Motion for Summary
10 Judgment (#31) is GRANTED in its entirety with prejudice.

11 IT IS FURTHER ORDERED that Plaintiff's Motion for a Conference with the Judge Prior
12 to Granting Summary Judgment to Either Party (#36) is DENIED.

13 IT IS FURTHER ORDERED that Plaintiff's Motion for Summary Judgment (#37) is
14 DENIED.

15 IT IS FURTHER ORDERED that the Motion to Sanction the Defendant (#41) is
16 DENIED.

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18 DATED: This 6th day of July, 2012.

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22 United States District Judge
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